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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	Supreme Court
)	No. R-18-0021
PETITION TO ADOPT)	
RULES OF SMALL CLAIMS)	Final Judicial Recommendations
PROCEDURE & MODIFY RULE)	for Proposed Small Claims Rules
101(b), JUSTICE COURT RULES)	
OF CIVIL PROCEDURE)	

Background

These comments are submitted by two of the justices of the peace who conducted the Pilot A Program for the proposed small claims rules, Hassayampa Justice of the Peace Miles Keegan and Manistee Justice of the Peace Donald Watts. Judges who participated in the Pilot B Program include: Arrowhead Justice of the Peace Craig Wismer, Dreamy Draw Justice of the Peace Frank Conti, Highland Justice of the Peace Steve Urie, Moon Valley Justice of the Peace Andrew Hettinger, North Mesa Justice of the Peace Cecil Ash, North Valley Justice of the Peace Gerald Williams, and White Tank Justice of the Peace David Osterfeld. They have joined their colleagues, all in their individual capacities, in this pleading.

This somewhat exhaustive process has produced a set of rules upon which there is near consensus. The requirement that every small claims case

be set for a hearing, prior to the defendant even being served, has apparently been abandoned. The proposals for optional Answers have also apparently been rejected. The Committee on Improving Small Claims Case Processing filed a new set of rules on May 24, 2019. While these proposed rules are very good, there are some opportunities for minor improvements. When the May 24, 2019 Committee Rules are combined with a set proposed by a group of judges on September 25, 2018, then a model set of rules is generated.

Final Recommended Set of Small Claims Rules

There are some significant differences between the Proposed Committee Rules and the Proposed Judicial Rules. The Proposed Committee Rules add an administrative requirement for Justice Courts to mail a notice in every case advising the litigants that the court could dismiss it. The Proposed Judicial Rules add a Motion for Judgment on the Pleadings option because there is no real reason to set a case for a small claims hearing if the Defendant, in their Answer, admits that they owe the amount in the Complaint. There are some additional differences in the two proposed versions of the rules, many of which are listed in the following chart.

Differences between Committees' Rules and Judicial Rules

Item or Idea	Proposed Committee Rules	Proposed Judicial Rules
Format follows JCRCF and has subheadings	Does not follow format; Contains no subheadings	Follows format; Has subheadings (e.g. Beginning a Small Claims Case, Responding to a Small Claims Case, etc.)
Examples (e.g. how to compute time)	Contains no examples	Contains some examples
Who can appear on behalf of a corporation, partnership or business	Requires authorization to be filed in each case	Merely states requirements for representation
Amendments to Complaint	Prohibited; Requires Plaintiff to dismiss case and to start over	Allowed as long as the amendment does not add a party
Amendments to Counterclaims	Prohibited; Requires transfer to regular Justice Court docket	Allowed
Limits counterclaims to the same transaction or occurrence that is the subject of the complaint	Does Not	Does
Addresses	Requires parties to provide physical address	Requires parties to provide mailing address
Requires court to mail notice in every case, upon receipt of proof of service, that the court may dismiss the case in 65 days	Required	Not Required; Allows optional written warning prior to dismissal in cases where no Answer is filed and Plaintiff has not sought Default
Motions for Judgment on the Pleadings	Not Authorized	Specifically Authorized
Mandatory Dismissal	Not Required; Allows Court to dismiss 65 days after Proof of Service and no subsequent activity	Required 45 days after the Defendant's Answer deadline has expired and the Plaintiff has not sought Default

**Statutory Updates to Acknowledge the Reality that Motions in Small
Claims Courts are Needed and are Overdue**

By statute, a motion for change of venue and a motion to vacate a judgment are the only motions allowed in a small claims action. However, nearly every day Justice Courts receive motions in connection with small claims cases that are not permitted by current law. Perhaps the best example is a delay request, which is also not authorized by statute. The current language in A.R.S. § 22-505(B) should be replaced with something similar to, “The Small Claims Rules govern small claims procedures. Only a justice of the peace can rule on motions.” This simple change would allow for flexibility because a court rule is easier to change than a statute.

CONCLUSION

We respectfully request that the rules at Attachment 1 to this comment be adopted.

RESPECTFULLY SUBMITTED, this 26th day of June 2019.

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Attachments:
Set of Proposed Small Claims Rules

Copy Mailed To:
Hon. C. Steven McMurry, Chair
Committee on Improving Small Claims Case Processing
1501 West Washington Street, Suite 410
Phoenix, AZ 85007

Attachment 1

SMALL CLAIMS RULES

PART I: GENERAL PROVISIONS

Rule 1. Application and Interpretation.

- a. **Title.** These rules are called the Small Claims Rules (“SCR”).
- b. **Application.** These rules apply only to small claims cases.
- c. **Small Claims Case.** A small claims case is an optional way to file lawsuit in a forum that is less formal and is more relaxed than a traditional civil case. A judicial officer can award only up to \$3,500.00 in damages, plus court costs, and (when appropriate) interest. Some types of cases cannot be filed in small claims court (e.g. lawsuits against a government agency, lawsuits for libel or slander). More information is available at A.R.S. § 22-503.
- d. **Interpretation.** Judicial officers and parties to a case should use and should interpret these rules so that small claims cases are resolved in an inexpensive and prompt manner.
- e. **No Jury, No Discovery, No Appeal.** There is no right to a jury trial and there is no right to discovery (e.g. depositions, requests for production of documents) in a small claims case. There is also no right to appeal the decision of the judicial officer who hears the case. A.R.S. §§ 22-504(B), 22-516(B), 22-518 & 22-519.

Rule 2. Computing Time. Time is measured in calendar days, with a few exceptions. In calculating any period of time specified or allowed by these rules, the day of the event is not counted. Saturdays, Sundays, and legal holidays are counted, unless the day to take action falls on a day the court is closed. *For example, although a defendant has 20 days to file an answer, a defendant served with a small claims complaint on November 2, 2018 would have until November 26, 2018 to file an answer, because both Thanksgiving and the Friday after Thanksgiving are court holidays.*

Rule 3. Parties to the Case

- a. **Parties.** A party is anyone who files a small claims case or anyone against whom a claim is made in a small claims case. A party can be an individual, a marital community, a corporation, a partnership, or another legal entity.

b. **Plaintiff.** A plaintiff is the party who files the small claims case. The plaintiff must be the person who was actually damaged. For example, a person generally cannot file a case on behalf of someone else.

c. **Defendant.** A defendant is the party who has been sued.

d. **Responsibilities of the Parties.**

(1) **Use of Correct Legal Name.** Both parties must use their legal name when filing or responding to a small claims case. Each defendant must be sued by their correct legal name.

(2) **Updated Information.** Both parties must provide their mailing address, their phone number, and their e-mail address to the court.

(3) **Conduct.** Parties and witnesses who appear in court must conduct themselves in an orderly, courteous, and dignified manner.

(4) **Documents.** If a party files a document with the court, then that party must mail or deliver it to the other party.

(5) **Accommodation Requests.** If a party requests the assistance of an interpreter, or needs some other type of reasonable accommodation, then they should notify the court as soon as is possible; but not later than 5 days before any scheduled hearing or mediation. Parties may not use a friend or a family member as a language interpreter.

Rule 4. Representing Parties.

a. Either spouse may represent a married couple.

b. An attorney may not represent a party in a small claims case unless all parties agree to it in writing.

c. Someone who is not an attorney may represent either a corporation if they are a full time corporate officer or a partnership if they are an active general partner. An authorized full time employee may also represent a corporation, a partnership, an association, or an organization. A.R.S. § 22-512; Rules of the Supreme Court, Rule 31(d)(7).

PART II: BEGINNING A SMALL CLAIMS CASE

Rule 5. Complaint. A small claims case begins when a plaintiff files a complaint against a defendant. The complaint must legibly and briefly state the factual basis of the plaintiff's claim. The complaint must also request a specific amount of money to be paid by the defendant to the plaintiff.

Rule 6. Summons. A summons is a document prepared by the court that gives instructions to the defendant.

Rule 7. Service of the Summons, Complaint and Notice. The plaintiff must serve the summons and the complaint on the defendant. The plaintiff must also serve a Notice to the Plaintiff and Defendant that is similar to one at Appendix A.

Rule 8. Time and Method of Service. Service of process for small claims cases is governed by A.R.S. § 22-513. The plaintiff may serve a business by serving that business' statutory agent.

a. **Mail.** The plaintiff may serve the defendant by either registered or certified mail, "return receipt requested." The plaintiff can establish that the defendant was served by filing with the court either the signed card indicating that the defendant signed for the certified mail or a receipt printed from the postal or delivery service's website.

b. **Personal Service.** The plaintiff may also serve the defendant by using a process server, a constable, or a sheriff's deputy.

c. **Deadline for Proof of Service.** The plaintiff must provide proof of service to the court not later than 45 days from the day the complaint is filed.

Rule 9. Dismissal for Lack of Service. On its own motion, the court shall dismiss a complaint as to any defendant who has not been served with the summons and complaint within 45 days after the complaint was filed.

PART III: RESPONDING TO A SMALL CLAIMS CASE

Rule 10. Answer. A defendant's written response to a complaint is called an answer. The answer must include a short factual response to the allegations in the plaintiff's complaint. A.R.S. § 22-514.

Rule 11. Counterclaims.

a. **Definition and Deadlines.** A counterclaim alleges that the plaintiff owes the defendant money. The defendant must file a counterclaim within 20 days of being served with the summons and complaint. The amount of the counterclaim is also limited to \$3,500.00. The plaintiff must file a reply to the counterclaim within 20 days of receiving it. A.R.S. § 22-517.

b. **Types of Allegations Allowed.** The subject matter of the counterclaim must directly relate to the same contract or event that is the subject of the plaintiff's complaint. *For example, if a tenant files a small claims case alleging that their landlord failed to return their security deposit, the landlord could then file a*

counterclaim alleging that the damages to the rental property exceeded the amount of the security deposit. However, if the landlord wants to also allege that this same tenant damaged his car, then that would most likely not be a proper counterclaim and should instead be a separate lawsuit.

PART IV: MOTIONS

Rule 12. Requirements for Motions. A motion is a request from a party that a justice of the peace take some type of action. Written motions must state facts and reasons in support of the request and must be mailed to the other party. Any opposing party has 10 days after receiving the motion to file a response with the court.

Rule 13. Permissible Pre-Hearing Motions.

a. **Amendments.** A plaintiff can amend their complaint prior to a hearing or a mediation being set. A defendant can amend their counterclaim prior to a hearing or a mediation being set. Amendments to add an additional party are not allowed.

b. **Change of Venue.** A defendant may file a motion for change of venue, if the defendant believes that the case has been filed in the wrong justice court, within 20 days of being served with the summons and complaint. A.R.S. § 22-505.

c. **Continue.** Either party may file a motion to continue either a hearing or a mediation. Unless an emergency is present, the party seeking the delay must file the motion not later than 20 days prior to the scheduled court date. In the event of an emergency, court staff will make an attempt to contact the opposing party to determine whether there is an objection to the delay request.

d. Default.

(1) If the defendant has been served, but has not timely filed an answer, then the plaintiff may file a motion for a default judgment. A defendant may also file a motion for default judgment against a plaintiff who has not timely responded to a counterclaim.

(2) Any motion requesting a default judgment must attach documents establishing the factual basis for the amount being requested.

(3) Any plaintiff's motion requesting a default judgment must comply with the federal Servicemembers Civil Relief Act and must include a statement stating whether the defendant is on active federal military duty.

(4) The failure to seek a default judgment can result in the complaint being dismissed, in accordance with Rule 15.

e. **Judgment on the Pleadings.** If the defendant files an answer admitting a debt, then the plaintiff may file a motion requesting that a judgment be entered.

f. **Notice of Settlement; Dismissal by Plaintiff.** The parties may file a stipulation to dismiss the case if it has settled. A plaintiff may file a motion to dismiss the complaint any time prior to the hearing or mediation.

g. **Objection to Hearing Officer.** A party may request that a justice of the peace, rather than a hearing officer, decide their case. A party must make this request in writing and at least 15 days before the scheduled hearing. A.R.S. § 22-506.

h. **Transfer to Civil Division.** Either party may request that a small claims case be transferred to the civil division of a justice court, if done at least 10 days prior to the time set for a hearing or mediation. A.R.S. § 22-504.

i. **Motions Requiring Transfer to Civil Division.** If the Defendant files a motion requesting that the case be dismissed for any reason other than settlement (e.g. lack of jurisdiction, failure to state a claim, improper defendant) prior to a hearing or mediation, then the case shall be transferred to the civil division of the justice court.

PART V: CASE MANAGEMENT

Rule 14. Setting the Hearing Date. When the court receives the defendant's answer, the court shall set the case for either a small claims hearing or for a mediation. This court date shall be set for a date within 60 days of the defendant's filing an Answer. A.R.S. § 22-515.

Rule 15. Alternative Dispute Resolution. Instead of or in addition to a small claims hearing, a court may set the case for a form of alternative dispute resolution or mediation, including Online Dispute Resolution.

Rule 16. Dismissal by Court.

a. The court shall have a case management system that alerts a justice of the peace to cases when the following events have occurred:

- (1) The plaintiff has provided proof that the defendant has been served,
- (2) The defendant has not filed a timely answer, and

(3) The plaintiff has failed to seek a default judgment within 45 days of the date that the defendant's time to file an answer has expired.

b. The court shall dismiss complaints meeting the three criteria in Rule 16(a). A court may send a written warning notice to the plaintiff prior to doing so.

PART VII: HEARING PROCEDURES

Rule 17. Small Claims Hearing.

a. **Role of Judicial Officer.** The judicial officer conducting the hearing must do so in a manner that both parties have an opportunity to present their evidence. Formal rules of evidence and procedure do not apply. A.R.S. § 22-516.

b. **Role of Parties.** Both the plaintiff and the defendant should come prepared to testify and should bring any relevant witnesses, documents, or photographs that they want the judicial officer to consider in deciding their case.

c. **Appearance by Telephone or Video Link.** Either party may request to appear, or may request that a witness appear, by telephone or by video. Any such request must be submitted at least 15 days before the scheduled hearing and must be mailed to the opposing party. If a party to a case is going to appear remotely, then that party must attach to the request any documents, photographs, or other evidence it wants the court to consider.

Rule 18. Default Hearings. A court may set a case for a default hearing if it believes that the documents present in the case file do not adequately establish proof of the claimed debt.

PART VIII: SMALL CLAIMS JUDGMENTS

Rule 19. Judgment. A judgment is the final signed written order from the court that documents the decision made in the case. A court, on its' own or upon request of a party, can correct a clerical or a mathematical mistake in the judgment. The judicial officer conducting the hearing may render a judgment at the end of the hearing but must do so within 10 days after the hearing has concluded.

Rule 20. Motion to Vacate Judgment.

a. **Grounds.** A party may file a motion asking the justice of the peace for relief from a small claims judgment for one or more of the following reasons:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Fraud, misrepresentation, or other misconduct of the opposing party;
- (3) The judgment is void;

(4) The judgment has been satisfied, released, or discharged; or it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer fair;

(5) The judgment was entered in violation of the Servicemembers Civil Relief Act; or

(6) Any other reason justifying relief.

b. Timing and Impact of Motion.

(1) A motion made under this rule must be made within a reasonable time, and if the reasons stated are in either Rule 19(a)(1) or Rule 19(a)(2), then no more than 6 months after the date of the judgment.

(2) A pending motion does not affect the judgment's finality or suspend its' operation. *For example, a defendant cannot stop a garnishment action merely by filing a motion to vacate a judgment.*

Appendix A

READ THIS NOTICE CAREFULLY

Notice to Plaintiff and Defendant: A small claims lawsuit has been filed in justice court.

1. The small claims process is an inexpensive, quick, and informal way to resolve civil disputes up to \$3,500.
2. Persons in a lawsuit are called "parties." There is a "plaintiff" and a "defendant." A "plaintiff" is someone who files a lawsuit against a "defendant."
3. Individuals represent themselves in a small claims lawsuit. There usually are no attorneys. One spouse may represent both spouses. A full-time corporate officer or authorized employee may represent a corporation; an active general partner or an authorized full-time employee may represent a partnership; an active member or an authorized full-time employee may represent an association; and any other organization may be represented by one of its active members or authorized full-time employees.
4. **You do not have a right to an appeal from a small claims judgment.** Either party may request a transfer of the lawsuit from the Small Claims Division to the regular Civil Division of the justice court. A transfer will allow:
 - (1) Either party to have an attorney;
 - (2) The defendant to file a counterclaim for more than \$3,500;
 - (3) Either party to file motions that are not permitted in small claims lawsuits;
 - (4) Parties to have a jury trial; and
 - (5) A party to have the right to appeal.
5. You must properly complete your court papers and file them when they are due. Blank forms for a small claims lawsuit are available on the Arizona Judicial Branch website and are available from any justice court.
6. Court staff are not allowed to give you legal advice. However, court staff can provide information regarding the jurisdiction, venue, pleadings, and procedures of the small claims division.
7. You must follow the Arizona Revised Statutes and Arizona Rules of Small Claims Procedure that apply in your lawsuit. The statutes and rules are available in many public libraries and at the courthouse. The statutes are also online at the Arizona State Legislature webpage, and the rules are online at the Arizona Judicial Branch Court Rules webpage.
8. Some filings require a filing fee. Either party can request a fee waiver or deferral from the court, but the party must still file documents on time.
9. PLAINTIFF: When you file your lawsuit, the court will provide you with a summons and a copy of this notice. You must file proof of service within 45 calendar days or your case may be dismissed. **A lawsuit against the defendant cannot proceed without proper service.** Methods of service can be found in Rule 7 of the Arizona Rules of Small Claims Procedure. If proof of service is not timely filed or your case is not concluded within 65 days of the date the defendant was served, the court may dismiss your case unless it finds a good reason not to.
10. DEFENDANT: You must file a written answer and mail a copy to the plaintiff. Otherwise, judgment may be entered against you. If you have a claim against the plaintiff that is based on the same event described in the plaintiff's complaint or based on a different event, you may file a counterclaim. A defendant who files a counterclaim must mail a copy to the plaintiff.
11. BOTH PARTIES: You must appear at all scheduled hearings or alternative dispute resolution conferences. Both parties must provide supporting evidence for their claims and defenses.
12. A justice of the peace or a hearing officer who has received specialized training will conduct the hearing. You should be prepared to clearly present your evidence. Although you may be permitted to appear telephonically for reasons such as no longer residing in the area, it would present a financial hardship, etc., you may be at a disadvantage since all evidence must be submitted to the court before the hearing. If you fail to appear at a hearing, the court may enter a judgment against you. To ensure that you receive these notices, you must keep the court informed, in writing, of your current address and telephone number until the lawsuit is over.